IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

CIVIL MISC. WRIT PETITION NO. 267 (M/S) OF 2002.

Smt. Harshada P. Worah W/o Late Shri Parveen M. Worah
R/o Padmini Niwas, The Mall, Mussoorie.

.....Petitioner.

Versus

1. **District Judge, Dehradun.**
2. **Shri Kishore Gidwani, S/o Shri C.T. Gidwani R/o B-389, New Friends Colony, New Delhi.**
3. **Shri Dhanraj Gidwani, S/o Late C.T. Gidwani, R/o B-389, New Friends Colony, New Delhi.**
4. **Smt. Shakun Jaiswal W/o Shri K.S. Jaiswal R/o 148, Sunder Nagar, New Delhi.**

.....Respondents.

Mr. V.K. Kohli, Sr. Advocate assisted by Mr. I.P. Kohli, learned counsel for the petitioner.
Mr. A Rab, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

1. By means of this petition, moved under Article 227 read with Article 226 of the Constitution of India, plaintiff has sought quashing of judgment and order dated 6th of May 2002 passed by learned District Judge, Dehradun, in Rent Control Appeal No. 107/2000.

2. Brief facts of the case as narrated in the petition are that the petitioner (landlord) moved an application under Section 21 (1) (a) of U.P. Act XIII of 1972, for release of the accommodation in question situated at Mussoorie, which was registered as P.A. Case No. 10 of 1990 by the Prescribed Authority, Dehradun, The accommodation in question consists of two rooms with separate kitchen, two bathrooms and two servants quarters in the tenancy and occupation of the respondents no. 2

to 4 of the petition. It is alleged in the petition that the petitioner has two sons and two daughters. One of the daughters is unmarried. The petitioner needs the accommodation in question for her own use and for the use of her family members. It is admitted that the petitioner is running a hotel with the name and style of Hotel Padmini Niwas which consists of 24 rooms but the petitioner is in occupation of only one room which is insufficient for herself and her family member, particularly when the petitioner's children visit her at Mussoorie. Originally one Smt. Mohini Gidwani was the tenant of premises in question and on her death respondents no. 2 to 4 inherited the tenancy but it is alleged that all the three are living permanently in Delhi, and visit Mussoorie hardly for the 10 days in a year during summers. Learned Prescribed Authority after considering the evidence of the parties allowed the release application vide its order dated 31.3.2000 aggrieved by which respondents no. 2 to 4 (tenants) preferred an appeal before respondent no.1 which was registered as Rent Control Appeal No. 107 of 2000. The said appeal, after hearing the parties, was allowed, and release application was rejected by the learned District Judge (respondent no.1). Hence this petition by the landlord on the ground that the learned District Judge has erred in law in not considering the petitioner's need as bonafide and genuine.

3. A counter affidavit has been filed on behalf of the respondents no.2 to 4 in which it has been stated since the petitioner runs a hotel consisting of 24 rooms as such her need of the premises in question is not genuine. It is further stated in the counter affidavit that the

petitioner's son Mr. Mihir Worah is married person and settled in United States. Her another son is also married and settled in Mumbai It is disputed in the counter affidavit that the petitioner is in occupation of only one room rather it has been stated that she is living in cottage consisting of three rooms. In para 9 of the counter affidavit it has been stated that the family of the contesting respondents are in continuous use and occupation of the premises in question and it is wrong to say that they are permanent resident of Delhi. In para 14 and 15 of the counter affidavit it is stated that after the Amin inspected the spot, request was made by the respondents for re-inspection, which was rejected by the learned Prescribed Authority. It is alleged in the counter affidavit that the report of the Amin was sketchy and wrong.

4. I heard learned counsel for the parties and perused the affidavit, counter affidavit along with annexures annexed thereto.

5. Admittedly the petitioner is a landlord and respondents no. 2 to 4 are tenants of the premises in question. It is also not disputed that the premises in question consist of two rooms with separate kitchen, two bathrooms and two servants quarters. It is also not denied between the parties that the petitioner runs a hotel in Mussoorie in the name and style of Hotel Padmini Niwas. The dispute relates as to the genuineness and bonafide need of the land lady of the accommodation in question and the comparative hardship between the parties. Learned Prescribed Authority after taking evidence from the parties, allowed the release application of the land lady with the conclusion that her need was bonafide and genuine and respondents' hardship is no more to that of the land lady.

Perusal of the judgment of the Prescribed Authority which is Annexure 8 to the petition shows that the petitioner since lives only in one room she has difficulty in accommodating her children who come to visit her as such learned Prescribed Authority found the need of the land lady as genuine. The said authority also arrived at the finding when the respondents are permanently living in Delhi and when they visit Mussoorie during summer they can stay in any hotel. As against this the impugned judgment and order dated 6.5.2002 passed by learned District Judge in Rent Control Appeal, shows that he disagreed with the view of the learned Prescribed Authority as to the genuineness of the need of the land lady. He also rejected the report of the Amin Commissioner as to the fact that respondents were not found residing at the premises in question on the date of the inspection, on the ground that they were not given any prior information of the date of inspection. Learned District Judge was also of the view that since Km. Sejal Worah, daughter of the land lady, is not residing in Mussoorie as such merely on the ground that she may visit her mother, the need of landlady does not become genuine.

6. In the array of the parties as mentioned in the petition, respondents no. 2,3 and 4 are shown to be resident of Delhi. This fact has not denied in the counter affidavit if address mentioned in the petition of the respondents is wrong. Learned District Judge has nowhere reversed the finding of the learned Prescribed Authority if the tenants of the present premises in question are not residing in Delhi. The ground on which the appeal has been allowed of respondent no. 1, is that learned District Judge did not found need of the landlady as genuine. Admittedly

landlady is resident of Mussorrie and it is not disputed that she is living in Padmini Niwas the Mall, Mussoorie. No doubt petitioner runs a hotel consisting of 24 rooms in Mussoorie, and her children are working away from Mussoorie, but that by itself does not render her need false. Learned District Judge appears to have erred in law in not considering the fact that even after marriage, children do come to their parents. There is no dispute as to the fact that one of his daughter Km. Sejal Worah is still unmarried and she has filed affidavit that she comes to Mussoorie to her mother to stay there. If the petitioner runs a hotel it does not mean that she has to accommodate her children and relative in rooms of the hotel instead of her residential accommodation. While examining the need, the status of the family cannot be said to be a irrelevant factor. Learned District Judge has totally ignored the said fact. In the opinion of this court, learned District Judge has also erred in rejecting the Amin Commissioner Report that the respondents (tenants) were not found living in the premises in question. Copy of the order sheet of the learned Prescribed Authority shows that the respondents have continuously avoided the inspection by the Amin. Learned District Judge has erred in not considering the fact that inspection was done on the application of the respondents and not of the petitioner. It cannot be said if the inspection means the inspection only on date when the respondents come from Delhi to Mussoorie for that purpose only.

7. Learned counsel for the respondents drew my attention to the principle of law laid down in ***Ranjeet Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases page 682,*** and argued that this court in its

revisional jurisdiction cannot re-determine factual disputes. I have perused the said case law. It only says that complicate question of fact cannot be re-appreciated in the jurisdiction of issuance of writ of certiorari. This court is not examining intricate question of fact in this petition. In this regard my attention was drawn on behalf of the petitioner to the principle of law laid down in ***P.S. Pareed Kaka and ors. Vs. Shafee Ahmed Saheb (2004) 5 S.C.C. 241.*** In which it has been held that to examine the error of law committed by the Lower Court, High Court can, even in revisional jurisdiction, re-appreciate the evidence to the extent it is necessary. When the legal question as to the bonafide need of the land lord or comparative hardship between the parties, is to be examined it is always natural that some re-appreciation of evidence would become necessary as such merely on the ground as pointed out by the learned counsel for the respondents, this court can not close its eyes to the relevant facts of the case as to the bonafide need of landlady or that the tenants are living in Delhi.

8. On behalf of the respondents my attention was also drawn to Annexure 2 to the counter affidavit and it is argued that the petitioner had earlier got vacated two suites from her tenants and she could have shifted her accommodation in those premises. It is further submitted on behalf of the respondents that the petitioner's object is only to get vacated the premises one after another, and her need is not genuine. From the perusal of the written statement of the respondents filed before the Prescribed Authority the said fact does not appear to have been pleaded or at least it is not clear when the said premises were got vacated

by the petitioner. In the circumstances its necessary to peruse the reply given by the petitioner in her rejoinder affidavit. Perusal of the record shows that the said premises got vacated in the year 1987 are converted as rooms of the hotel, which is being run by the petitioner.

9. In view of the above discussion, in the opinion of this court, the learned District Judge has erred in law by holding that the need of the landlord is not genuine, that too without reversing the finding of the learned Prescribed Authority, when the tenants are permanently living in Delhi. Accordingly the petition deserves to be allowed. The petition is allowed. Impugned judgment and order dated 6.5.2002 passed by respondent no.1 in Rent Control Appeal No. 107/2000 is quashed, and the judgment and order passed by the learned Prescribed Authority in P.A. Case No. 10 of 1990 is upheld. No order as to costs.

(Prafulla C. Pant, J.)

Dated : 8th December, 2004.

P. Bandhavakar